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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,043	11/29/2001	Claude Taranta	514413-3905	3499

20999 7590 06/06/2003

FROMMER LAWRENCE & HAUG  
745 FIFTH AVENUE- 10TH FL.  
NEW YORK, NY 10151

EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 06/06/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

Examiner

Applicant(s)

Group Art Unit

Macy

166

7

**—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—****Period for Reply**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status**

Responsive to communication(s) filed on 5/15/03

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

Claim(s) 1-12 is/are pending in the application.

Of the above claim(s) 7-12 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-6 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) 1-12 are subject to restriction or election requirement.

**Application Papers**

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119 (a)-(d)**

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

**Attachment(s)**

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2,4

Notice of Reference(s) Cited, PTO-892

Notice of Draftsperson's Patent Drawing Review, PTO-948

Interview Summary, PTO-413

Notice of Informal Patent Application, PTO-152

Other \_\_\_\_\_

**Office Action Summary**

Applicant's election with traverse of group I pyrethroids species of deltamethrin in Paper No. 6 is acknowledged. The traversal is on the ground(s) that applicants argue a comprehensive search requires examination of all inventions and constitute an undue burden to applicant to restrict. This is not found persuasive because examiner finds the invention patentably distinct; the methods of control requiring considerations of specific pests, amounts and practices not required for consideration of compositions, and the production requires step wire consideration not needed in examination of the composition or methods of control, thus, a serious burden.

The requirement is still deemed proper and is therefore made FINAL.

Claims 7-12 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.

Please provide a general abstract, not claim format.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

—"In particular" render claim indefinite. It is unclear if agents and thickener, or thickener, or thickener is intended limitation of 6; same with claim 5.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Heriet et al WO 96/01047).

The instant o/w formation, of insecticide~~s~~ (lines 15-24, p.1) pyrethroids, deltamethrin (line 38, p.1) with polar co solvents-ketone~~s~~, pyrrolidone~~s~~ (p.3, lines 24-28), stabilizers, citric acid, and preservatives-BHT(p.3, lines 31-38) and antifoamer and solid additive (the instant thickener). Pyrethroid~~s~~ is 0.5-30% (p.4,top). The instant solvent ester is at p.1, lines 17-20, the nonionic mix at p.1 lines 21-23. These SPONTO 232, the instant witco products.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Audegond et al-5435992.

Audegond provides deltamethrin composition of the instant nonionic mix (col. 2, lines 41-47,64), with biphenyl aromatic solvent, thus, the instant non critical, unspecified in claim, film former, and vegetable oil, transesterified (col.3, lines 10-17) in water (lines 38-44, col.3). Aatic acid is utilized, the instant cosolvent (example 1, 2, 4) with preservatives, BHT example 1 shows 15g/L DeltaMethr~~pe~~. Other polar cosolvents include ketone/glycols (col.2, last paragraph).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueninghoff et al 6068849 in view of Henriet et al.

Mueringhoff also provides EC formulae of pyrethroids (col.4, top), utilizing mixes of fatty acid esters (col.2, line22+) as solvents forming emulsion when added ~~monionic~~ and anionic cosurfactants. These include (col.3, lines 3-24) the HLB-specific nonionic surfactants, although not presented in the limited instant non critical claim to HLB 4-12 and 12-20. However Heriet provides this mix, with the SPONTO product.

It would have been obvious a person of ordinary skill in the art at the time the invention was made desiring to utilize pesticides in emulsified sprayable formulation; to use MueningHoff, for general formulae for pests of interest, modified for use of deltamethrin for insect pests with the nonionic/anionic mix of Henriet in order to provide higher flash point/safety and reduced non target toxicity (p.1, lines 25-30 of Henriet).

The selection of each ingredient and form thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used in not a basis for patentability.

Thus, the artisan would find it obvious to prepare particular ingredient combinations, sizes, concentration and ratios of ingredients, depending upon the target

species, desired number of applications, length of time for desired protection, ease of handling, target species, degradation.

It has not clearly been established by objective showing of some additional unusual and/or unexpected results that the administration of the particular form of active, carrier of the particular form of structure to be treated, provides any greater level of prior art expectation as claimed. Further, no criticality as to the particular mix of ingredients has shown by applicant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4242 for regular communications and 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd  
May 21, 2003



NEIL S. LEVY  
PRIMARY EXAMINER